

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: MR. AND MRS. GREGORY SWECKER, Complainants, vs. MIDLAND POWER COOPERATIVE, Respondent.	DOCKET NO. FCU-99-3 (C-99-76)
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**ORDER GRANTING MOTION TO REOPEN AND
DENYING MOTION REGARDING TWELVE-DAY NOTICE**

(Issued April 26, 2000)

On April 10, 2000, Midland Power Cooperative (Midland), Central Iowa Power Cooperative (CIPCO), and the Iowa Association of Electric Cooperatives (IAEC) filed a "Joint Motion to Reconsider and Joint Motion to Reopen Hearing." The moving parties requested that the administrative law judge (ALJ) reconsider the ruling that Midland's disconnection of the Sweckers' electric service for nonpayment of their bill was unlawful and Midland could not charge the Sweckers for the disconnection and reconnection, find that the twelve-day disconnect notice was not an issue before the ALJ, and rescind the ruling. Alternatively, the moving parties requested the record be reopened for the limited purpose of accepting additional evidence and reviewing the same with regard to the issue of whether Midland complied with the twelve-day

notice requirement of 199 IAC 20.4(15). The moving parties provided affidavits and exhibits to show Midland had provided two twelve-day disconnect notices to the Sweckers.

On April 24, 2000, the Consumer Advocate Division of the Department of Justice (OCA) filed an "Answer and Objection to Joint Motion to Reconsider and Reopen Hearing." The OCA challenged the moving parties' assertion that the issue of the twelve-day notice was not before the ALJ, and stated the legality of Midland's disconnection of service to the Sweckers was an issue to be resolved in the formal complaint proceeding. The OCA further argued that the Sweckers did not have notice of Midland's refusal of their payment prior to disconnection, the Sweckers were not given the opportunity to cure the alleged defect in payment, and that the additional evidence offered by Midland does not change the correct resolution of the issue of the legality of the disconnection.

On April 24, 2000, the Sweckers filed a "Resistance to Motion to Reconsider and to Reopen Hearing." The Sweckers argued the disconnection was illegal because they tendered a check in the amount of \$2,889.30 for the past due bill, three-phase service, and all applicable fees, and failure to pay for a different type or class of service is insufficient cause for refusing service. The Sweckers contend they paid the undisputed amounts for service under tariff 26.11, and had a complaint pending before the Iowa Utilities Board, and therefore they should have avoided disconnection for a period of 60 days after the disputed bill was sent.

The issue of the legality of the Sweckers' disconnection was an issue before the ALJ, and had been an issue in the informal complaint proceeding. Whether or not Midland provided the required notice is a part of the issue of the legality of the disconnection. However, in their briefs, the parties focused on the legal issue of whether Midland was obligated to accept the Sweckers' check, not on developing the factual record regarding the disconnection issue, including whether Midland had provided the required notice to the Sweckers. The informal complaint file, which is a part of the record, evidently contains incomplete information regarding the disconnection notices Midland provided to the Sweckers. According to the only information in the informal complaint file, Midland provided three days' notice prior to disconnection.

Since the legality of the disconnection issue was before the ALJ, and the informal complaint file was a part of the record in the case, it was incumbent on Midland to ensure the record regarding the disconnection was complete. However, it is true that no one specifically raised the issue of the twelve-day disconnection notice, because the parties knew something not apparent from the record, and unknown to the ALJ: that Midland had provided two twelve-day notices to the Sweckers. In addition, the OCA alleges that Midland provided a twelve-day notice of disconnection on February 4 and March 5, 1999, but did not notify the Sweckers of the refusal of their payment nor offer an opportunity to cure prior to disconnection on March 22, 1999, and therefore the disconnection was still illegal. It is therefore in the

interest of justice that the record be reopened to allow the parties to present complete evidence and argument on the issue of the legality of Midland's disconnection of service to the Sweckers on March 22, 1999, including whether the required twelve-day notice was provided, whether Midland was obligated to notify the Sweckers of the refusal of their check and provide an opportunity to cure prior to disconnection, whether Midland attempted to do so or did provide such notice, and whether Midland was obligated to accept the Sweckers' check.

Midland, CIPCO, and the IAEC have presented evidence and argument in their affidavits, exhibits, and joint motion. The OCA and the Sweckers have presented argument in their responses to the motion. Several parties have previously briefed whether Midland was obligated to accept the Sweckers' check. If the parties wish to present additional evidence or argument solely on this issue, they must do so by May 10, 2000. Parties may refer to arguments made in previous briefs without restating the entire arguments if they wish. No hearing will be held, and no additional rounds of briefing will be allowed.

IT IS THEREFORE ORDERED:

1. The joint motion filed by Midland, CIPCO, and the IAEC that the ALJ find the twelve-day disconnection notice was not an issue before her is hereby denied.
2. The joint motion to reopen the record for a limited purpose filed by Midland, CIPCO, and the IAEC is hereby granted.

3. The parties may submit additional evidence and argument on the issue of the legality of Midland's disconnection of service to the Sweckers on March 22, 1999, including whether the required twelve-day notice was provided, whether Midland was obligated to notify the Sweckers of the refusal of their check and provide an opportunity to cure prior to disconnection, whether Midland attempted to do so or did provide such notice, and whether Midland was obligated to accept the Sweckers' check. Any such evidence and argument must be filed by May 10, 2000.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Raymond K. Vawter, Jr.
Executive Secretary

Dated at Des Moines, Iowa this 26th day of April, 2000.